



Before: Judge Alessandra Greceanu
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

AKERMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON WITHDRAWAL

Counsel for Applicant:
George Irving

Counsel for Respondent:
Andreas Ruckriegel, UNFPA Legal Affairs

Introduction

1. On 22 February 2018, the Applicant, a staff member holding a fixed-term appointment and serving at the P-5 level, step 5, as Coordinator of Transparency in the Division for Management Services (DMS) as an Administrative Agent at UNFPA Headquarters in New York, filed an application contesting the decisions of the Human Resources Associate, UNFPA, regarding an extension of fixed term appointment limited to two months, the introduction of incorrect information on the official record and in official communications and abuse of authority in performance evaluation and other acts contributing to a hostile working environment.

2. On 22 February 2018, in accordance with art 8.4 of the Dispute Tribunal's Rules of Procedure, the Registry transmitted the application to the Respondent, instructing him to file his reply by 26 March 2018.

3. On the same day, the case was assigned to the undersigned Judge.

4. On 19 March 2018, the Counsel for the Applicant filed a notice of withdrawal, stating that "Pursuant to the terms and conditions of a recently concluded settlement agreement, the Applicant hereby withdraws all of his claims in the present proceedings before the Dispute Tribunal in finality, including on the merits, and with no right of reinstatement and therefore requests a discontinuance of the proceedings in Case No. UNDTINY/2018/008."

Consideration

5. The Tribunal commends the Applicant for withdrawing the present case. This saves valuable resources and contributes to a harmonious working relationship between the parties.

6. The Tribunal considers that each person has the fundamental human right to free access to justice, which includes the right to file an application in front of an impartial tribunal, and therefore also the right to withdraw that application.

7. An application represents the materialization of an applicant's right to appeal the contested decision. This is the first procedural act by which an applicant invests the Tribunal of dealing with the appeal. The whole procedural activity will take place within its limits and the application must be filed by the person who has the right to appeal the contested decision (*ratione personae*), within the applicable time limit (*ratione temporis*) and in front of the competent Tribunal (*ratione loci*).

8. Consequently, to be legally valid, a request for the withdrawal of an application has to be formulated by the applicant and/or by his/her counsel and must consist of the unconditional expression of the applicant's free will to close his/her case before a judgment is issued.

9. An application can be withdrawn orally and/or in writing, partially or entirely. The withdrawal request can refer either to the pending application (as a procedural act) or to the right to appeal itself.

10. If an identical application is filed by the same applicant against the same party after she or he waived her or his right to appeal the matter, the exception of *res judicata* can be raised by the other party or *ex officio* by the court itself. *Res judicata* requires three cumulative elements: (i) same parties; (ii) same object; and (iii) same legal cause, and has both negative and positive effects: it is blocking the formulation of a new identical application and guarantees that it is not possible to rule differently in the same matter.

11. *Res judicata* is a reflection of the principle of legal certainty and does not prejudice the fundamental right to a fair trial since the access to justice is not absolute and can be subjected to limitations resulting from the application of the other

principles. The principle of rule of law and the principle of legal certainty, expressed also by *res judicata*, require, *inter alia*, that an irrevocable decision given by the Tribunal not be further questioned (*non bis in idem*) (see *Shanks* 2010-UNAT-026bis; *Costa* 2010-UNAT-063; *Meron* 2012-UNAT-198). As stated by the United Nations Appeals Tribunal in *Meron*, “there must be an end to litigation” in order to ensure the stability of the judicial process.

12. The Applicant expressed in his motion his will to withdraw his application and thereby to end the pending litigation.

13. In conclusion, the object of the withdrawal request is the right to appeal itself and represents the Applicant’s free will to end the litigation. Since the Applicant has withdrawn his application, the Tribunal no longer needs to make a determination on the merits and takes note of the withdrawal.

IT IS ORDERED THAT:

14. The Applicant has withdrawn the matter in finality. There being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2018/008 is hereby closed without liberty to reinstate.

(Signed)

Judge Alessandra Greceanu

Dated this 20th day of March 2018